**SIM SEOH BENG @ SIM SAI BENG & ANOR.**

**v.**

**KOPERASI TUNAS MUDA SUNGAI ARA BERHAD**

HIGH COURT, PENANG
TUAN VINCENT NG KIM KHOAY J.
[CIVIL SUIT NO. 22-72-1993]
11 JULY 1994

***PRACTICE & PROCEDURE: Amendment to O. 29 r. 1 of the Rules of the High Court 1980 - Whether retrospective - Injunction obtained prior to amendment - Whether injunction lapsed after expiry of 14 days from date of injunction - Whether paragraph 2C of r. 1 of O. 29 was applicable - Whether effect of the injunction was, inter alia, to stop the holding or progress of a meeting.***

The plaintiffs were members of the defendant society. The plaintiffs obtained an *ex parte* injunction to restrain the defendant from acting on its decision to suspend the plaintiffs membership at the Annual General Meeting of the defendant.

The defendant applied to set aside the injunction and the question that arose was whether the amendments to Order 29 rule 1 of the Rules of the High Court 1980 by the insertion of paragraphs (2B) and (2C) (paragraphs 2B and 2C of Rule 1) were of retrospective application though the said injunction was obtained before the said amendments.

**Held:**

**[1]** The general rule that amending provisions are prospective in its operations does not apply in cases of legislation dealing with procedure or evidence in criminal as well as civil proceedings; the latter being retrospective in its operation unless otherwise provided by clear words. The life span of an *ex parte* injunction granted in equity by the exercise of the Court's discretion must essentially be a matter of procedure rather than substantive law or substantive right.

**[2]** The privative provisions in s. 30 of the Interpretation Act cannot apply to amendments dealing with procedure or evidence unless expressed to the contrary. Unless so expressed the Court will have to apply the common law principle that where an amendment is concerned merely with matters of procedure it is to be construed as retrospective in its application, unless there is clear indication that such was not the intention of Parliament.

**[3]** As paragraphs 2B and 2C of Rule 1 are clearly and exclusively procedural in nature, and as they do not affect a plaintiff's right, privilege or cause of action acquired or accrued before the amendment, both paragraphs 2B and 2C of Rule 1 should apply retrospectively. Thus paragraph 2B was applicable to the facts of the case and in the circumstances the injunction had lapsed after the expiry of 14 days from the date of its issue.

**[4]** It would be straining the language too far to say that the said injunction was meant to stop the holding or progress of the AGM. In fact the AGM proceeded and resolved eleven other items on its agenda. This being so, the said injunction could not be said to have the effect of stopping the "holding or progress of a meeting of a society", as it was not expressed to restrain, and neither did it have the effect of restraining the holding of the defendant's AGM. In the circumstances the defendant's contention that the injunction was caught by the prohibition in Paragraph 2C of Rule 1 was without merit.

*[Defendant's application allowed with costs].*

**Cases referred to:**

*Malayan Banking Berhad v. Siong Electronic Industries [1981] Sdn. Bhd. & 11 Ors; [1994] 1 AMR 12 p. 651* ***(refd)***

*Wright v. Hale (3 LT Rep xi S 444)* ***(refd)***

*Yrttiaho v. The Public Curator of Queensland [1971] 125 CLR 228* ***(refd)***

*PP v. Datuk Haji Harun bin Haji Idris [1977] 1 MLJ 14* ***(refd)***

*Lee Chow Meng v. Public Prosecutor [1978] 2 MLJ 36* ***(refd)***

**Legislation referred to:**

Interpretation Acts, 1948 & 1967, s. 30

Rules of the High Court 1980, O. 29 r. 1 (2B and 2C), O. 32

**Other sources referred to:**

**Halsbury's Laws of England,** 4th Edn., Vol. 44 p. 574

*For the plaintiffs - Gooi Hock Seng; M/s Shan & Gooi*

*For the defendant - Mureli Navaratnam; M/s Ghazi & Lim*

**JUDGMENT**

**Vincent Ng Kim Khoay J:**

On 11 March 1993 the Court granted an *ex parte* injunction (enclosure 6 - the said injunction) to the plaintiffs restraining the defendant society (the Society) from, to quote, "reporting, enforcing and/or acting upon its decision of 19 January 1993 purportedly suspending plaintiffs' membership of the Koperasi Tunas Muda Sungai Ara Berhad, under Rule 17(1) of the Undang-Undang Kecil of the Koperasi Tunas Muda Sungai Ara Berhad at its 21st Annual General Meeting to be held on 14 March 1993 and at any other subsequent AGM or Extraordinary Meeting of the defendant society until the final determination of the suit or until further order."

This was the said Society's application to me per summons-in-chambers dated 13 March 1993 (enclosure 11) to, *inter alia*, set aside the said injunction, which also raised and sought this Court's ruling on two preliminary issues concerning the implementation of the recent amendments in O. 29 r. 1 of Rules of the High Court (RHC) by the insertion of paragraphs (2B) and (2C) (paragraphs (2B) and (2C) of Rule 1). The said Society's contention was that the paragraphs (2B) and (2C) of Rule 1 were of retrospective application though the said injunction was obtained before the said amendments.

The plaintiffs were members of the said society. On 28 January 1993 they received from the defendant society a letter dated 26 January 1993 informing them that their membership of the said society had been suspended by the said Society's Board of Directors with effect from 26 January 1993. In this letter the plaintiffs were also informed that they will be given an opportunity to be heard on the said suspension at the said Society's forthcoming Annual General Meeting (the AGM). On 26 February 1993 the plaintiffs received a letter dated 23 February 1993 informing them that the AGM of the said Society was to be held on 14 March 1993. And on 12 March 1993 at 4.00 p.m. the said Society was served with the said *ex parte* injunction dated 11 March 1993.

The *ratio decidendi* in the cases of *Malayan Banking Berhad v. Siong Electronic Industries* [1981] Sdn Bhd & 11 Ors. [1994] 1 AMR 12 p. 651, *Wright v. Hale* 3 LT Rep XI S 444 and *Yrttiaho v. The Public Curator of Queensland* [1971] 125 CLR 228, *PP v. Datuk Haji Harun bin Haji Idris* [1977] 1 MLJ 14 and the Federal Court case of *Lee Chow Meng v. Public Prosecutor* [1978] 2 MLJ 36, had clearly established the principle that unless an amending provision alters substantive law or remove a substantive right it should be construed retrospectively.

Formerly, *ex parte* injunctions were invariably expressed to last until further order or until trial of the action. The effect of the new amending provision in O. 29 r. 1 (2B) should be construed as merely fixing, in a definitive manner, the life period of such injunctions. The life span of an *ex parte* injunction granted in equity by the exercise of the Court's discretion must essentially be a matter of procedure rather than substantive law or substantive right, as there is nothing to preclude the plaintiff (under the new rules) from repeatedly obtaining consecutive 14 day *ex parte* injunctions while maintaining his initial cause of action as the common anchor-basis for such repeated *ex parte* injunctions. The general rule that amending provisions are prospective in its operations does not apply in cases of legislation dealing with procedure or evidence in criminal as well as civil proceedings; the latter being retrospective in its operation unless otherwise provided by clear words. This ought to be so, as no person could have, in law, any vested interest in the course of a procedure or rules of evidence which is changed. His only vested right is in his cause of action or defence or continuance of same.

The privative provisions in s. 30 of the Interpretation Action cannot apply to amendments dealing with procedure or evidence unless expressed to the contrary; and if not so expressed the Court will have to apply the common law principle. According to **Halsbury's Laws of England,** 4th Edn., Vol. 44, p. 574 the common law principle is that where an amendment is concerned merely with matters of procedure it is to be construed as retrospective in its application, unless there is clear indication that such was not the intention of Parliament.

Though the *Siong Electronic Industries* case dealt only with the application of O. 32 of The RHC - concerning the filing of affidavits - yet the ratio in that case had followed correct principles and sound approach postulated in the other cases mentioned herein, being that where the amendments dealt with procedure or matters of evidence only, unless the contrary is expressed, same shall apply retrospectively and to all

actions whether commenced before or after the passing of the Amending Act.

Thus, as paragraphs 2B and 2C of Rule 1 are clearly and exclusively procedural in nature and they do not affect a plaintiff's right privilege or cause of action acquired or accrued before the amendment, I was of the considered view that both paragraphs 2B and 2C of Rule 1 should apply retrospectively. Thus, I ruled that paragraph 2B was clearly applicable to the facts of our current case and found that the said injunction had lapsed after the expiry of 14 days from 11 March 1993.

Though it was unnecessary for me to do so, I then considered the question of whether paragraph 2C of Rule 1 was also applicable to the facts of the present case.

Paragraph 2C of Rule 1 precludes the Courts from granting an *ex parte* injunction "if the effect is to stop the holding or progress of a meeting of a body corporate, a society, an association, a union, an organisation, a club or a body or persons whatsoever named". Counsel for the said Society had submitted that the **effect** of the said *ex-parte* injunction was to stop the holding or progress of a meeting in respect of expulsion of the plaintiffs and was caught by this amendment.

It was necessary to construe the wording of the said injunction in order to decide whether its effect was to stop "the holding or progress of a meeting ..." The question to ask here was: What was the primary purpose or effect of the said injunction? Surely, it would be straining the language too far to say that the said injunction was meant to stop the holding or progress of the said AGM as it was merely expressed to restrain the said Society **from reporting** to the said AGM or to **enforce and/or to act upon its Board of Directors decision dated 19 January 1993.** Indeed, the AGM was not stopped. It went on and resolved eleven other items on its agenda. The suspension of the plaintiffs was only one of twelve items on the agenda. This being so, the said injunction could not be held to have the effect of stopping "the holding or progress of a meeting of a society", as it was not expressed to restrain and neither did it have the effect of restraining the holding of the Society's AGM. I found no merit in this contention.

However, as I had earlier ruled that by virtue of paragraph 2B of Rule 1 the said injunction (enclosure 6) had clearly lapsed I gave order-in-terms of enclosure 11 to the defendant Society (merely for good measure as the setting aside of an expired injunction would be otiose) with costs of the application in their favour.